

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CEDRIC IVORY,

Petitioner,

v.

CASE NO. 04-CV-71279-DT
HONORABLE VICTORIA A. ROBERTS

ANDREW JACKSON,

Respondent.

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ORDER ON REMAND DENYING A CERTIFICATE OF APPEALABILITY

This matter is before the Court on remand from the United States Court of Appeals for the Sixth Circuit requesting a certificate of appealability ruling concerning the Court's denial of Petitioner's motion for relief from judgment brought pursuant to Federal Rule of Civil Procedure 60(b) (and denial of reconsideration regarding that motion) arising from the Court's denial of his habeas petition in 2005. The Court has previously denied Petitioner leave to proceed *in forma pauperis* on appeal finding that an appeal of the denial of his post-judgment motions would be frivolous and cannot be taken in good faith.

A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a court denies relief on the merits, the substantial showing threshold is met if the petitioner demonstrates that reasonable jurists would find the court's assessment of the claim debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). "A petitioner satisfies this standard by demonstrating that ... jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). In applying this standard, a court may not conduct a full merits review, but must limit its examination to a threshold inquiry into the underlying merits. *Id.* at 336-37. When a court denies relief on procedural grounds without addressing the merits, a

certificate of appealability should issue if it is shown that jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the court was correct in its procedural ruling. *Slack*, 529 U.S. at 484-85.

In denying Petitioner's post-judgment motions, the Court determined that his request for relief from judgment was untimely and lacked merit. Having considered the matter, the Court concludes that Petitioner has not made a substantial showing of the denial of a constitutional right nor has he shown that reasonable jurists could debate the correctness of the procedural ruling. Accordingly, the Court **DENIES** a certificate of appealability.

IT IS SO ORDERED.

S/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: April 6, 2012

The undersigned certifies that a copy of this document was served on the attorneys of record and Cedric Ivory by electronic means or U.S. Mail on April 6, 2012.

s/Carol A. Pinegar
Deputy Clerk